



Member FDIC

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January 12, 2004

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

RE: Docket No. R-1175 – Proposed Effective Dates for the FACT Act of 2003

Sent via e-mail to - [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Dear Ms. Johnson:

I am writing in regards to the above referenced docket and proposal concerning the recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act of 2003) as listed in the December 24, 2003, Federal Register, Vol. 68, No. 247 on pages 74529 through 74532.

National Penn Bancshares, Inc. is a \$3.4 Billion financial services holding company headquartered in Boyertown, Pennsylvania, with a variety of subsidiaries including National Penn Bank, a mortgage company, a broker-dealer, trust company and insurance agencies. We currently have over 900 employees, and over 65 Community Offices located in southeastern Pennsylvania.

We are not opposed to the sections outlined in the joint notice of proposed rulemaking, with the effective date of March 31, 2004. We support the earlier effective date for the less significant changes.

I will comment on four areas of FCRA, specifically,

- Timing of the more significant changes to FCRA
- Expanded obligations of creditors
- Accountability
- Automation

## **Timing of the More Significant Changes to FCRA**

The sections that are effective December 1, 2004 are a different story. When, it comes to implementation of major regulatory changes such as this, a longer implementation period is essential. It has been my personal experience that there is not enough time for large endeavors such as this. CIP (Customer Identification Program) and Privacy were two recent examples. While some of the changes may be easily implemented, others will require considerable efforts in changing policies, procedures, systems, training, and processes across the entire organization. For several of the sections, we are completely at the mercy of a variety of software vendors to make upgrades and enhancements to meet this deadline. Also, a December 1<sup>st</sup> deadline leaves very little time if other end of the year system enhancements, acquisitions, mergers, or testing, changes to systems or processes, or regulatory implementations are necessary in the same time period. For instance, the Check 21 Act (Regulation CC Changes) becomes effective in the fourth quarter of 2004, as well.

The FCRA obligations of those creditors who use consumer reports will become more complicated. I believe that the net effect of the new provisions will be to significantly increase our internal compliance responsibilities when reporting data to Credit Reporting Agencies, including insuring the accuracy of the data reported.

## **Expanded Obligations of Creditors**

In addition, the Amendments impose substantive lending restrictions that will require consideration by all Creditors, regardless of charter or license form. For example, I note that many of the new disclosures mandated by the Amendments theoretically could be incorporated into existing underwriting or loan administration processes.

It is important to note that special rules regarding credit scores will apply to residential mortgage lenders. In that regard, mortgage lenders originating closed-end, or open end, one to four family residential units must provide a credit score or proprietary credit score used by the mortgage lender. However, the Amendments incorporate virtually verbatim limitations contained in the California credit scoring statute, which specifically *excludes* from the definition of a credit score a "mortgage score" that is created by an underwriting engine, such as the electronic underwriting systems developed by Fannie Mae, or Freddie Mac. In the instance in which a mortgage score is used to determine eligibility for a home loan, in the place of the mortgage score, the Creditor will be required to provide a credit score obtained from a Credit Reporting Agency, as well as an explanatory disclosure. This may create consumer confusion, in my opinion.

We are thankful that the notice requirements due to risk-based pricing were significantly modified during the Conference Committee negotiations, and now appear to constitute merely, a notice requirement that discloses the impact that risk-based pricing may have on a consumer entitlement to credit, whereas earlier versions of the provision were complicated, transaction specific. In this regard, we understand that the Federal Agencies may permit the required disclosure to be provided as part of the application process and as a “standard disclosure”. We encourage and support this endeavor.

To the extent that the implementing regulations to be issued by the Federal Agencies permit this homogenization, the compliance burden should be minimized and the degree of effective compliance should be increased.

### **Accountability**

As a primary user of Credit Reports, one of the concerns we hear frequently from our customers is the fact that not all Creditors take their FCRA duties as seriously as we do, particularly their duty to report and correct erroneous information. For example, we have had several customers, who have had credit reports with obvious erroneous or duplicate data reported by major non-banking companies. Oft times the customer would not even know that negative information was being reported, sometimes by a defunct company, or a collection agency. When the customer would contact that company, many times they would get the answer, “It’s not our obligation, talk to the Credit Reporting Agency. We can’t do anything.” While, the amendments to FCRA create accountability for the banking and financial industry, it has perhaps not gone far enough in creating the accountability for other non-banking sectors that also report credit information on consumers.

### **Automation**

One area that was not addressed specifically in the law or the regulation was credit reporting agencies and automation, except in the concept of accuracy. In my opinion, automation plays an important part in the accuracy process. One of the greatest learning experiences for our company has been the merger/acquisition process and the credit reporting process. Only through appropriate testing, reviewing and oversight can a company ensure that credit records change to the appropriate new owner during a conversion or acquisition process.

While duplicate trade lines, duplicate accounts, duplicate account numbers, may be unique to our region, due to all of the bank and non-bank mergers and acquisitions recently, we are inclined to think this is not the case. This is a

serious issue that impacts the consumer, and one over which they have little or no control.

I have seen credit reports where duplicate information is reported, and in some cases companies have not taken the initiative to correct the issues. This only serves to frustrate the consumer, and gives the impression that all organizations operate in this fashion.

The second automation concern involves the reporting of manually collected consumer information. This may also be a regional issue relative to Pennsylvania. In many counties in PA, judgement, tax liens and other information is not automated at the county level, i.e. the Recorder of Deeds or Prothonotary's office. It is thus retrieved by credit reporting agencies in a manual form and inputted by the credit reporting agency into the final consumer credit report. This information is retrieved by the credit reporting agency, based on the consumer "name only". Social security numbers or physical street addresses are not taken into account.

This has the potential to cause severe problems for some customers. In particular, one of our customers who happened to have the same exact name (but a different SS# and address) as a convicted PA felon, currently residing in a PA jail. You can imagine the nasty information that was reported inaccurately on the wrong person, just because he had a common name identical to a criminal. This issue has been resolved, but it created extra work for us and our customer. Plus, I am told by the credit reporting agency that there is no guarantee that it will not happen again, particularly until any of the manual records are automated.

In conclusion, I agree that FCRA was overdue for amendment, particularly in regards to identity theft issues. In this letter, I have outlined some areas where I feel clarification or specific guidance may be warranted. I appreciate your consideration of my comments. Should anyone have questions concerning the comments, I may be reached during business hours at (610) 369-6185.

Sincerely,

Debra A. Wetzel, MBA, CIA, CRCM, CRP  
Vice President and Compliance Officer

cc: jbyrne@aba.com